thereby. *Benthin* v. *R. R. Co.* 24 N. Y. App. 303; *Tucker* v. *Ry. Co.* 53 N. Y. App. 571. So if it has running powers over the line of another company, it is responsible to its own passengers for negligence of the other company, no matter what the arrangement with said company, because of the contract to carry and the consequent implied contract of due care in all the agencies to be employed. HUTCHINSON ON CARRIERS, § 514. Where a company, without authority divests itself of its duties to the public, as by lease to another, it is liable to passengers for injuries arising from its own failure to keep the road in order or for such other's negligence. *Abbott* v. *R. R. Co*, 80 N. Y. 27; *Nelson* v. *R. R. Co.* 26 Vt. 717. By the weight of authority, if the lease be authorized, the lessor is not liable for injuries arising from the negligent operation of the road by the lessee, but is liable for breach of duty to the public in the construction of tracks, buildings, etc. *Nugent* v. *R. R.* 80 Me. 62; *R. R.* v. *Phinazee*, 93 Ga. 488; ELLIOTT ON RAILROADS, § 467. If one company merely permits another to make use of its track it is responsible to its own passengers for injury to them from negligence of the other company. *R. R.* v. *Barron*, 5 Wall. (U. S.) 90: *McElroy* v. *R. R.* 4 Cush. (Mass.) 400; though a contract to use a track is not necessarily a lease. *U. P. Ry.* v. *C. R. I. & P. Ry.* 51 Fed. 309. It will also be liable for animals negligently killed, or for damage by fire caused, by such other company. *R. R. Co.* v. *Hinebaugh*, 43 Ind. 354; *R. R. Co.* v. *Salmon*, 39 N. J. L. 299. As to whether a company, by giving permission to another to use its tracks, owes a duty to the passengers of the other road, some cases, with the principal case, hold it not responsible. *March* v. *R. R.* 9 Foster (N. H.) 9; WOOD ON RAILWAY LAW, § 325. Others hold it responsible. *R. R.* v. *Lane, Admr.* 83 Ill. 448; *R. R.* v. *Phenazee, supra.* In such a case, if the injured person founds his claim on contract, he will fail, as there is no privity between him and the company. ELLIOTT ON RAILROADS, § 475; *Nugent* v. *R. R. supra.*

CHATTEL MORTGAGE—SUFFICIENCY OF DESCRIPTION.—A description in a chattel mortgage of the property as "five hundred bushels of yellow corn" at a certain place, when there was a greater quantity of the same kind in the pile, *Held*, sufficient. *McCormick, etc., Co.* v. *Reynolds* (Neb. 1901), 88 N, W. Rep. 530.

On principle this decision is contrary to the great weight of authority, *Stonebraker* v. *Ford* (1884) 81 Mo. 532; *Moore* v. *Brady* (1899), 125 N. C. 35. There are no cases directly supporting the proposition. The basis for the opinion is the analogy to the doctrine that a valid sale may be made of an undesignated aliquot part of a large mass of uniform quality, Even as to this there is certainly a conflict of authority, though it is stated in respect to grain, that the American courts largely support the affirmative view. MECHEM, SALES §§ 713, 716. The rule has been opposed in sales on the ground that confusion and fraud might easily result. *Ferguson* v. *Northern Bank* (Ky. 1897), 14 Bush 555. The same objections may be urged in case of a mortgage.

CONFLICT OF LAWS—STATUTE OF FRAUDS—STATUTE AFFECTING REMEDY—REPRESENTATIONS AS TO ANOTHER'S CREDIT.—A statute of Michigan prohibited the bringing of an action upon an unsigned representation as to another's credit, and the representation was made in New York, where it would have been actionable, but suit was brought in Michigan. *Held*, that the statute affected the remedy and not the right, and that suit could not be maintained. *Third Nat. Bank* v. *Steel*, (Mich. 1902) 88 N. W. Rep. 1051.

This is the view of the English authorities. *Leroux* v. *Brown* (1852), 12 C. B. 801; DICEY CONFLICT OF LAWS, 713. In this country there is a decided conflict. The doctrine is firmly upheld in some jurisdictions, *Kleeman* v. *Collins*, (Ky. 1872) 9 Bush 460; *Obear* v. *First Nat. Bank* (1895), 97 Ga. 587. But has received strong dissent in other states. *Cockran* v. *Ward*, 5 Ind. App. 89, 51 Am. St. R. 229; *Wolf* v. *Burk*, (1892) 18 Colo. 264. The distinction in the principal case appears to be based on technical differences of language and not on the intent of the statute. 19 L. R. A. 792, note.

CONSTITUTIONAL LAW—14TH AMENDMENT—CLASS LEGISLATION—LICENSE LAW.—An act imposed a greater license tax on those domestic corporations having their principal place of business or chief works outside of the state: *Held*, constitutional and not discriminative within the inhibition of the 14th amendment. *Blue Jacket Copper Co.* v. *Scherr*, (W. Va. 1901), 40 S. E. Rep. 514.

There is no doubt about the power of the legislature to classify. *Barbier* v. *Conolly*, (1885 113 U. S. 27. This classification may "proceed upon any difference which has a reasonable relation to the object sought to be accomplished." *Atchison etc., R. R., Co.* v. *Matthews* (1889), 174 U. S. 96. And the state may for that purpose adapt the laws to the conditions as found. *Clark* v. *Kansas City* (1900) 176 U. S. 520. A difference in the conditions of persons following

the same pursuit justifies a discrimination in license taxes. *Slaughter* v. *Com.* (Va. 1856), 53 Gratt. 776. The fact that corporations having property within the state are subject to ordinary taxes on property, while those having their property outside of the state cannot be so taxed, seems to be such a difference in condition as would allow the particular classification for taxation.

EVIDENCE—PHYSICAL EXAMINATION OF PLAINTIFF IN PERSONAL INJURY SUIT.—Plaintiff sued for personal injuries. Defendant demanded an order for a physical personal examination of the plaintiff. The order was granted, and physicians were appointed by the court for the purpose of making the examination. Before the examination had been made, the defense withdrew its request. The court, however, against the objection of both parties, proceeded on its own motion to cause the examination to be made and the physicians to testify. *Held*, the trial court exceeded its power. *South Covington St. Ry. Co.* v. *Stroh*, (Ky.), 66 S. W. Rep. 178.

In Kentucky the right of the defendant to compel the plaintiff in a personal injury suit to submit to an examination of his injuries, has been sustained; *Belt Electric Line Co.* v. *Allen*, 102 Ky. 551, 44 S. W. Rep. 89. And this is the rule in the Southern and Western states generally, wherever the question has arisen. To the contrary: N. Y. (before a statute providing differently), U. S., Ill., Ind., and possibly Del. and Tex. The right of the court itself, however, to compel such examination against the wishes of both parties seems not to have arisen before in Kentucky or in any other state.

INSURANCE—CONSTRUCTION OF TERMS OF INDEMNITY POLICY.—A policy of insurance provided "against loss from liability to every person who may . . . accidentally sustain bodily injuries while traveling on the road of the insured, under circumstances which shall impose upon the insured a common law or statutory liability." The question before the court was, whether the terms of this policy were "broad enough to cover the case where the person who is a traveler on plaintiff's road dies instantly and without conscious suffering in consequence of an accident for which the plaintiff is responsible." *Held*, that the terms of the policy were not broad enough to cover such a case, because, by the terms of the policy, "the liability is to a person who sustains bodily injuries, and such person must have a right of action therefor." *Worcester St. Ry. Co.* v. *Travelers' Ins. Co.*, (Mass. 1902) 62 N. E. Rep. 364.

There are two classes of statutes imposing liability for death caused by wrongful act. One of these classes continues the action which the person injured, had he lived, could have maintained, and does not create a new right of action. *McCubbin* v. *Hastings*, 8, 27 La. An. 713; *Read* v. *Great Eastern Ry. Co.*, L. R, 3 Q. B. 555. Under a statute of this kind it has been repeatedly held that if death was instantaneous, the deceased had no right of action and consequently none could survive. *Kearney* v. *Boston & Worcester Ry. Co.*, 9 Cush. 108; *Morgan* v. *Hollings*, 125 Mass, 93; *Mulchahey* v. *Washburn Car Wheel Co.*, 145 Mass. 281. The other class of statutes creates an entirely new right of action. *Hagan* v. *Kean*, 3 Dillon, 124; *James* v. *Christy*, 18 Mo. 162. Under a statute of the latter class recovery may be had, although there was instantaneous death without conscious suffering. *Mulhall* v. *Fallon*, 176 Mass. 266. The liability imposed in this case was not in continuation of any right ot action the deceased had. The deceased had no right of action. By the terms of the policy indemnity was given against loss from liability to the person injured, There was no liability to the person injured in this case, death being instantaneous. Therefore, this case is correctly decided.

INSURANCE—AGREEMENT TO ISSUE NEW POLICY—EFFECT OF FAILURE TO SURENDER OLD POLICY AND MAKE DEMAND WITHIN TIME STIPULATED.—A policy of insurance provided that in case the policy should lapse by reason of non-payment of premium, the holder thereof should be entitled, upon surrendering the original policy and making demand within six months after such lapse, to a paid-up nonparticipating policy. There was a failure to surrender the old policy and make demand for a new one within the time stipulated. Held, that insured did not forfeit his right to a paid-up policy by a failure to surrender the original policy and make demand within the six months, because time was not of the essence of the contract. *Washington Life Ins. Co.* v. *Myles* (Ky. 1902) 66 S. W. Rep. 740.

Under a like state of facts the court of appeals of Indiana holds that the surrender of the old policy and the making of demand within the six months is a condition precedent to the right to a paid-up policy. and a failure to comply with this condition amounts to a forfeiture of the right to a new policy. *Wells* v. *Vermont Life Ins. Co.* (Ind. 1902), 62 N. E. 501.